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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,547	03/26/2004	Patrick Thompson	2316.926USRE	9367
23552	7590	07/11/2006	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			CONNELLY CUSHWA, MICHELLE R	
			ART UNIT	PAPER NUMBER
			2874	

DATE MAILED: 07/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/810,547

Applicant(s)

THOMPSON ET AL.

Examiner

Michelle R. Connelly-Cushwa

Art Unit

2874

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 10, 12-16 and 35-39.
Claim(s) objected to: 2 and 3.
Claim(s) rejected: 1, 4-9 and 49.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: Note attached form PTO-892.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's Arguments filed June 21, 2006 are not persuasive.

The Examiner has attached a PTO-892 citing Larson et al., U.S. Patent 5,975,769. The PTO-892 form was mistakenly excluded from the prior Office action.

Applicant has noted a typographical error on page 5 of the Final Rejection. The heading of the rejection should read "claims 1, 10, 12-16 and 37-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larson et al. (US 5,975,769) in view of Petrunia (US 5,212,761)." Each of claims 1, 10, 12-16 and 37-49 have been individually addressed in the body of the rejection on pages 6-9, as indicated by the "regarding" statements directed to each of the claims, and the limitations of these claims are addressed with respect to the prior art in the Final rejection mailed April 18, 2006.

Applicant has noted that the Examiner introduced a rejection based upon the newly cited art of Larson in the Final Office action and has rejected claim 1 under 35 U.S.C. 103(a) as being unpatentable over Larson in view of Petrunia. Applicant states that claim 1 was not amended in the prior Amendment of January 23, 2006 and that Larson was not cited on an Information Disclosure Statement, and concludes that the final rejection is premature. Applicant has requested withdrawal of the finality.

The Amendment filed January 23, 2006 added new claim 49, which depends from claim 1. The limitations of new dependent claim 49 necessitated the new grounds of rejection presented in the Final Office action. The limitations of claim 1 are required to be addressed by the applied prior art before the limitations of claim 49 are addressed, since claim 49 depends from and therefore includes the limitations of base claim 1. Therefore, the Amendment filed January 23, 2006 necessitated the new grounds of rejection presented in the Final Office action mailed April 18, 2006. The Final rejection is proper and has not been withdrawn.

Regarding the rejections to claims 1 and 4-9 over Petrunia:

Applicant states that claim 1 recites a housing having a bottom, a top, a rear and a front; that the bottom, the rear and the sides define a cable notch region, wherein the cable notch region defines an opening for receiving a cable; and that a cable clamp extends from the rear in the cable notch region.

Applicant states that the Examiner asserts that Petrunia discloses a housing having an opening in a cable notch region, as "the cable notch region is a broad term that includes the region within and surrounding the cable notch." Applicants assert that they have pointed out that the cable notch region is particularly defined in claim 1 as the region defined by the bottom, rear and sides.

As stated in the Final Rejection, "The module of Petrunia includes a front, top, bottom, opposing sides and a rear, wherein the rear is the curved wall opposing the front panels (16 and 17). The cable notch region of Petrunia is the region including and surrounding channel 14, wherein that regions extends from the bottom (15) along the rear (the curved wall) and is located between opposing sides (11 and 12). Therefore, the bottom, sides and rear define the notch region. The opening (40) is in the notch region, i.e. the region including and surrounding channel 14." The claim language does not prohibit the top from further defining the cable notch region, but only requires the notch region to be defined by the bottom, opposing sides and rear.

Applicant states that the Examiner has responded that Applicants' are defining the curved wall to be the "top", while the Examiner considers the curved wall to be the "rear". Applicant states that Petrunia defines a portion of the curved wall as a "top" wall in column 2, lines 18-19. Applicant concludes that the curved portion that defines the opening is clearly not the "rear" wall, as the Examiner asserts, but is instead the "top" wall, as defined by Petrunia.

The module disclosed by Petrunia in Figures 1 and 2 is a three-dimensional object. The three-dimensional object includes a front surface (panels 16 and 17 form the front surface), and a rear surface (the curved wall) that is opposed to the front surface. The curved wall, therefore, forms a rear surface. The rear surface is opposed to the front surface.

Applicant states that the Examiner is creating a definition of a rear wall that is not supported by Petrunia and is contrary to Petrunia's definition. The Examiner disagrees. The Examiner is labeling structure that is clearly present in Petrunia. The curved wall forms a rear surface that opposes the front surface. Applicant has defined the rear surface as a surface opposed to the front surface. The curved wall of Petrunia is opposed to the front surface of Petrunia.

Applicant states that the Examiner has construed the limitations of claim 1 in a way that contradicts the plain meaning of the language. Applicant states that the opening 40 of Petrunia is clearly in a region defined by the top, not a region defined by the bottom.

Claim 1 states "the bottom, the rear, and the opposed sides defining a cable notch region wherein the cable notch region defines an opening for receiving a first cable" in lines 9-11 of the claim. The bottom, the rear, and the opposed sides of Petrunia define a cable notch region, as discussed above. Furthermore, the cable notch region defines the opening 40, as discussed in the rejection.

The claim language does not prohibit the top from further defining the cable notch region, but only requires the notch region to be at least defined by the bottom, opposing sides and rear, and that the cable notch region define an opening.

Applicant states that the plain language of claim 1 requires the opening to be in a region that is defined by the bottom, sides and

rear-not the top, sides and rear. The language of claim 1 only requires that the cable notch region define an opening. This limitation is addressed in the rejection.

Applicant states that the Examiner's use of Petrunia as a basis for rejection appears to contradict the Patent Office's "Reasons for Allowance" made during prosecution of the original application for the same claim.

MPEP Section 1445, which is titled, "Reissue Application Examined in Same Manner as Original Application", states, "As stated in 37 CFR 1.176, a reissue application, including all the claims therein, is subject to "be examined in the same manner as a non-reissue, non-provisional application." Accordingly, the claims in a reissue application are subject to any and all rejections which the examiner deems appropriate. It does not matter whether the claims are identical to those of the patent or changed from those in the patent. It also does not matter that a rejection was not made in the prosecution of the patent, or could have been made, or was in fact made and dropped during prosecution of the patent; the prior action in the prosecution of the patent does not prevent that rejection from being made in the reissue application. Claims in a reissue application enjoy no "presumption of validity." In re Doyle, 482 F.2d 1385, 1392, 179 USPQ 227, 232-233 (CCPA 1973); In re Sneed, 710 F.2d 1544, 1550 n.4, 218 USPQ 385, 389 n.4 (Fed. Cir. 1983). Likewise, the fact that during prosecution of the patent the examiner considered, may have considered, or should have considered information such as, for example, a specific prior art document, does not have any bearing on, or prevent, its use as prior art during prosecution of the reissue application.

Applicant states that the Examiner has improperly construed the claim limitations of claim 1 and the disclosure of Petrunia, as evidenced by:

1. Applicant's recited definition of the location of the opening and the clamp;
2. Petrunia's own disclosure and definition of a top curved wall, which contradicts the Examiner's characterization;
3. the Examiner's construction of a definition that contradicts the plain meaning of the claim language; and
4. the reasons previously put forth by the Patent Office that provide "a complete and accurate picture of the Office's consideration of patentability" over Petrunia.

Each of these issues has been addressed above.

Regarding the rejections to claims 1 and 49 over Larson in view of Petrunia: Applicant states that the only reasonable interpretation is that the end to which the Examiner refers is the interior end. Applicant states that the proposed modification does not meet the structural limitations of claim 1, because claim 1 recites a notch defined by a bottom, a rear, and opposing sides of the housing. The bottom, the rear, and the opposed sides of the module of Larson et al., however, do define a cable notch region. The passage way defined by rear walls 13, and the area surrounding the passage way, are part of the cable notch region, and a clamp placed in the proposed location, would be in the cable notch region. The lengthwise dimension of the clamp at least extends from the rear in a direction toward the front of the module, as shown in the Figures of Petrunia.

Michelle R. Connelly-Cushwa
MICHELLE CONNELLY-CUSHWA
PRIMARY EXAMINER
7/6/06